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No. 02-9065

In The
Supreme Court of the United States

SHAKUR MUHAMMAD, aka John E. Mease,

Petitioner,

v.

MARK CLOSE,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

I. Whether a plaintiff who wishes to bring a § 1983 suit challenging only the conditions, rather than the fact or duration, of his confinement must satisfy the favorable termination requirement of *Heck v. Humphrey.*

II. Whether a prison inmate who has been, but is no longer, in administrative segregation may bring a § 1983 suit challenging the conditions of his confinement (i.e., his prior placement in administrative segregation) without first satisfying the favorable termination requirement of *Heck v. Humphrey.*

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OPINIONS BELOW

The order of the United States Court of Appeals for the Sixth Circuit affirming the district court's grant of summary judgment is unreported and is reprinted at JA 104. The United States District Court's Opinion and Order Adopting Report and Recommendation and Granting Defendant's Motion for Summary Judgment is unreported, and appears in the appendix to Respondent's Brief in Opposition at 65a.

JURISDICTION

The order of the United States Court of Appeals for the Sixth Circuit was issued on September 23, 2002. The United States Court of Appeals issued an order denying Petitioner's petition for rehearing on November 14, 2002. Petitioner filed a petition for writ of certiorari on February 11, 2003, within 90 days of the entry of judgment, and this Court granted the writ of certiorari on June 16, 2003. Petitioner invokes the jurisdiction of the Supreme Court under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

42 U.S.C. § 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. § 2254 states, in pertinent part:

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that –

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B) (i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

STATEMENT OF THE CASE

This § 1983 action stems from an incident at Standish Maximum Facility in Standish, Michigan, where Petitioner Shakur Muhammad was an inmate. Petitioner's claim alleges that Respondent Mark Close, a guard at that facility, instigated a confrontation with Petitioner and then filed a false major misconduct report charging Petitioner with a more serious major rule violation than he committed – all in retaliation for Petitioner's having exercised his First Amendment rights by filing previous lawsuits and grievances against Respondent.[1]

[1] *See Crawford-El v. Britton*, 523 U.S. 574 (1998) (such retaliation offends the Constitution because it "threatens to inhibit exercise of the protected right") (citing *Pickering v. Board of Education*, 391 U.S. 563,

(Continued on following page)

Petitioner contends that on May 21, 1997, he was eating breakfast in the dining area when he noticed Respondent staring at him from an adjacent hallway. JA 71. Respondent then made a fighting stance toward Petitioner, and when Petitioner turned away, Respondent walked quickly toward him with his face contorted. JA 71. Petitioner stood up from the table. JA 71. Respondent stated "What's up?" and continued to stare at Petitioner, and at that point two other officers quickly handcuffed Petitioner and took him to a detention cell. JA 71.

Later that day, Respondent filed a major misconduct report charging Petitioner with "threatening behavior," a "nonbondable" charge that requires prehearing detention.[2] JA 5. Petitioner remained in detention for six days pending a major misconduct hearing on May 27, 1997. On that date, after reviewing the statements that were submitted by Petitioner, Respondent, and various other officers and inmates who witnessed the incident, the hearing officer acquitted Petitioner of threatening behavior and found him guilty of the lesser offense of "insolence" for "[getting] up from his seat in an alarming manner and [standing] face to face with the officer." JA 58. Like threatening behavior, insolence is also a major rule violation under the

574 (1968)); *Brown v. Crowley*, 312 F.3d 782 (6th Cir. 2002) (retaliation against a prisoner based upon his exercise of a constitutional right violates the Constitution).

[2] The Michigan Department of Corrections Policy Directive defines "threatening behavior" as "[w]ords, actions or other behavior which expresses a[n] intent to injure or physically abuse another person. Such misconduct includes attempted assault and battery." JA 40. Common examples of "threatening behavior" include "[t]hreats of sexual assault made by one prisoner to another prisoner; writing threatening letters to another person; threats made to a third person which are intended to place the person threatened in fear of harm." *Id.*

correctional department's Policy Directive, but unlike threatening behavior, it is "bondable" and does not require prehearing detention.[3] The hearing officer ordered disciplinary sanctions of seven days in detention and thirty days' loss of all privileges for the violation. JA 58. Among the privileges Petitioner lost were use of a telephone, radio or tape player; access to the yard, the television, study, and game rooms, the library, exercise facilities, and the prison store; and the ability to have visitors or participate in leisure or special activities. JA 60-61. Petitioner's guilt of the charge of insolence included no findings regarding the merit of his claim of unconstitutional retaliation by a state official as such facts, even if true, were no defense to insolence. JA 58. Any future victory in Petitioner's § 1983 claim would therefore not directly or indirectly undermine the adjudication for insolence.

Petitioner served his term of detention – six days prior to the hearing and seven days after the hearing – and subsequently filed a complaint against Respondent under 42 U.S.C. § 1983 alleging injuries as a result of Respondent's threatening conduct and his retaliatory use of the prison disciplinary process. JA 62-69. Petitioner's original complaint demanded $4,300 in compensatory damages, $5,000 in punitive damages, and expungement of the misconduct charge. JA 68-69. Respondent promptly moved for dismissal of the complaint or for summary judgment on the grounds that (a) this Court's decision in *Edwards v. Balisok,* 520 U.S. 641 (1997), barred Petitioner's § 1983 claim; (b) the hearing officer's finding of guilt on the

[3] "Insolence" is defined as "[w]ords, actions, or other behavior which is intended to harass, or cause alarm in an employee." JA 44. Examples include "[a]busive language, writing or gesture directed at an employee." *Id.*

charge of insolence defeated Petitioner's claim that the charge was retaliatory; and (c) Respondent was entitled to qualified immunity. *Edwards v. Balisok*, which applied the favorable termination rule of *Heck v. Humphrey*, 512 U.S. 477 (1994) to disciplinary proceedings resulting in the loss of good-time credits, held that regardless of the remedy actually sought, a prisoner must first obtain a favorable judgment in state court or in federal habeas before he can obtain damages in a § 1983 action that necessarily implied the invalidity of the deprivation of good-time credits. *Id.* at 646. Respondent did not contend that Petitioner was deprived of good-time credits, but instead argued – consistent with Sixth Circuit precedent but contrary to the precedent of almost every other federal circuit court – that *Edwards* barred a § 1983 action that implied the invalidity of *any* punishment that was imposed at a disciplinary hearing. Record 9 at 3.

Magistrate Judge Charles E. Binder issued a Report and Recommendation rejecting each of these grounds and recommending denial of Respondent's request for dismissal and summary judgment. With respect to Respondent's *Edwards v. Balisok* argument, Magistrate Judge Binder indicated that the relevant injuries were not the seven days of detention and 30 days' lost privileges imposed as sanctions for Petitioner's guilt of insolence, but the six days of mandatory prehearing detention and Respondent's instigation of the incident that led to that detention. Brief in Opposition 27a. In the judge's view, *Edwards* did not preclude Petitioner's § 1983 suit because Petitioner had already served the relevant detention and was therefore not "in custody" within the meaning of the habeas corpus statute, 28 U.S.C. § 2254, and could not bring a habeas action "with respect to the alleged provocation of the incident and the wrongful pre-hearing detention." *Id.* There was no reason to require Petitioner to favorably terminate his claim, Magistrate Judge Binder

stated, because "there is no concern that a § 1983 action could be used as an end run on the habeas exhaustion requirement" in a case "where there has been no deprivation of good-time credits and the inmate has served whatever period of time in segregation or toplock that was imposed by the hearing officer." *Id.* Even if the unavailability of habeas did not by itself establish Petitioner's right to pursue his § 1983 claim, the magistrate judge reasoned, Petitioner's § 1983 suit still was not precluded by *Edwards*: Petitioner was not disputing his guilt of the insolence charge, only Respondent's instigation of the incident in an effort to frame Petitioner and his issuance of a misconduct ticket for a more severe charge than was necessary. Therefore, a favorable outcome would not imply the invalidity of the disciplinary hearing officer's finding. *Id.*

Respondent filed objections to the Report and Recommendation but did not contest Magistrate Judge Binder's rejection of Respondent's request to dismiss Petitioner's suit under *Edwards v. Balisok*. Record 18. District Judge Robert Cleland issued an order adopting the report in all respects and ruling that the witness statements describing Respondent's behavior could "easily be interpreted as a gesture soliciting a fight." Brief in Opposition 41a.

Judge Cleland also adopted the magistrate judge's recommendation to grant Petitioner's request to amend his § 1983 claim. The amended complaint continued to allege that Respondent engaged in threatening conduct and falsely charged Petitioner with a major misconduct charge in retaliation for Petitioner's having filed two lawsuits and several grievances against Respondent. JA 71-72. The new complaint eliminated the request for expungement of the misconduct charge and requested $10,000 in compensatory and punitive damages "for the physical, mental and emotional injuries sustained as a result of defendant's retaliatory acts." *Id.*

Petitioner litigated much of his § 1983 suit *pro se*, as the magistrate judge denied a motion for appointment of counsel at the outset of this litigation. When Petitioner moved for reconsideration of that ruling after Judge Cleland denied Respondent's request for dismissal or summary judgment, the magistrate judge granted the request and appointed *pro bono* counsel to represent Petitioner. Following discovery, which included numerous depositions of officers and inmates who had witnessed the incident, Respondent again filed a motion for summary judgment.[4] This time, Magistrate Judge Binder recommended that the district judge grant summary judgment on the grounds that Petitioner had failed to come forth with evidence permitting a reasonable jury to conclude that Respondent had retaliated against Petitioner. Brief in Opposition 65a.

When Petitioner's *pro bono* counsel declined to file objections to this unfavorable ruling in the Report and Recommendation, U.S. District Judge David M. Lawson, to whom the case had been transferred, permitted Petitioner to file objections *pro se*, *see* Record 84, but subsequently adopted that Report and granted summary judgment to the Respondent, finding that although Petitioner properly pleaded all the elements of his retaliation claim, he failed to provide sufficient factual support for the element of causation. Record 86 at 4-5.

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[4] Both Magistrate Judge Binder and U.S. District Judge David Lawson, to whom the case had been transferred, rejected Respondent's arguments in a separate motion to dismiss that Petitioner had failed to exhaust his administrative remedies and had failed to allege a physical injury as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) & (e). Record 62, 71, and 68 at 8-11.

Petitioner, still proceeding *pro se*, filed a timely appeal to the Sixth Circuit. Sixth Circuit Record 2; Record 88. Respondent filed a brief supporting the district judge's ruling and arguing, alternatively, that Petitioner's case should have been dismissed under the recent decision in *Huey v. Stine*, 230 F.3d 226, 230-231 (6th Cir. 2000), which held that a prisoner's § 1983 action alleging that prison officials wrongly disciplined him in violation of the Eighth Amendment was barred by the favorable termination requirement of *Heck v. Humphrey* and that the unavailability of habeas corpus did not entitle the prisoner to revive the § 1983 claim. Sixth Circuit Record 3.

In an unpublished opinion decided without oral argument, the Sixth Circuit ignored the basis of the district court's decision and affirmed the grant of summary judgment based on its decision in *Huey v. Stine*. JA 106. Without noting that Petitioner's amended complaint omitted the request to expunge the misconduct charge from his file, the court of appeals held that because Petitioner sought punitive and compensatory damages *and* requested the expungement of his misconduct charge, the case was governed by *Heck v. Humphrey*, "which [the Sixth Circuit] applied to a prisoner seeking damages and expungement of a disciplinary infraction in *Huey v. Stine*" and which precluded a § 1983 claim where the relief sought would require the court "to unwind the judgment of the state agency." JA 106. The Sixth Circuit denied Petitioner's request for rehearing.

SUMMARY OF THE ARGUMENT

A constitutional challenge to the conditions affecting prison life is a quintessential cause of action under 42 U.S.C. § 1983. Prison guards and officials who control nearly every facet of inmates' lives, and who at times

violate the constitutional rights of those inmates, epitomize the type of defendant contemplated by both the plain terms and the history of § 1983, which creates liability for acts committed "under color of any [state] statute, ordinance, regulation, custom or usage." This Court's decisions have long recognized that § 1983 is the appropriate vehicle for challenging the constitutionality of the conditions of an inmate's confinement. *See, e.g., Hope v. Pelzer,* 536 U.S. 730 (2002) (§ 1983 claim against prison guards who handcuffed an inmate to a hitching post as punishment for disruptive conduct); *Wilwording v. Swenson,* 404 U.S. 249 (1971) (prisoners' challenge to living conditions and disciplinary measures could be read to plead causes of action for deprivation of constitutional rights by prison officials under § 1983). Petitioner's challenge to the retaliatory acts of a prison guard falls squarely within the range of conventional § 1983 claims.

This Court has identified limits to § 1983's broad substantive scope in circumstances where a winning § 1983 damages action would eclipse the more specific terms of another congressional enactment – the federal habeas corpus statute. 28 U.S.C. § 2254. In *Preiser v. Rodriguez,* 411 U.S. 475 (1973), this Court established an easily administrable, bright-line rule for effectuating Congress's intent in the habeas corpus exhaustion requirement: cases that implicate the heart of habeas corpus by challenging the fact or duration of an inmate's custody must be brought as habeas claims, while cases challenging only the conditions of an inmate's confinement can proceed under § 1983. *Id.* at 489.

In *Heck v. Humphrey,* 512 U.S. 477 (1994), this Court reaffirmed *Preiser*'s dichotomy between fact-or-duration cases and conditions cases and identified a "favorable termination requirement" in the doctrine, holding that in cases in which the prisoner's lawsuit, if successful, would demonstrate the invalidity of the criminal judgment under

which the plaintiff was imprisoned, a § 1983 claim could not go forward unless the prisoner first proved that the conviction or sentence in question had already been reversed on appeal or otherwise deemed invalid by an executive order, an act of a state tribunal, or a federal court's issuance of a writ of habeas corpus. *Id.* at 486-487. Like its predecessor in *Preiser,* this rule stems from a need to prevent § 1983 from swallowing the more specific federal habeas corpus statute in actions that attack the legality of a prisoner's custody with the goal of securing immediate or speedier release.

This rationale does not extend to § 1983 claims that challenge only the conditions of a prisoner's confinement. While *Preiser v. Rodriguez* made clear that § 2254 was the sole federal remedy for a state prisoner challenging the fact or length of his imprisonment because such claims fell within the traditional purpose – the "core" – of habeas corpus, § 1983 remained the "proper remedy for a state prisoner who is making a constitutional challenge to the conditions of his prison life, but not to the fact or length of his custody." 411 U.S. at 492, 494, 499. The interest in implementing Congress's explicit intent to require exhaustion of state remedies in habeas corpus cases underlies the *Preiser* Court's ruling that the more general Civil Rights Act is not the right remedy for challenges to the fact or length of a prisoner's confinement. That interest is irrelevant, however, to constitutional claims that fall outside the traditional purpose of federal habeas corpus.

Decisions after *Preiser* expanded upon this principle in circumstances involving procedural challenges to the way state prison officials deprived inmates of good-time credits, *see Wolff v. McDonnell,* 418 U.S. 539 (1974), damages claims that did not explicitly seek but would nonetheless bring about the invalidation of a criminal conviction, *see Heck v. Humphrey,* and challenges to allegedly biased prison disciplinary proceedings that

resulted in the loss of good-time credits, *see Edwards v. Balisok,* 520 U.S. 641 (1997). But this Court's evolving jurisprudence on the interplay between § 1983 and federal habeas has never disavowed *Preiser's* fundamental distinction between cases challenging the conditions of confinement and cases challenging its very fact or duration. Any extension of the *Preiser-Heck* rule to cases not affecting the fact or duration of confinement would be unsupported by logic or history and tantamount to an unwieldy judicial amendment of the Civil Rights Act.

Congress further reinforced the inapplicability of the favorable termination requirement to cases challenging prison conditions when it enacted the Prison Litigation Reform Act (PLRA) and specifically required prisoners to exhaust all available administrative remedies before bringing a § 1983 claim with respect to prison conditions.[5] The PLRA makes clear that Congress does not intend a favorable termination requirement to apply to § 1983 actions challenging prison conditions. Such a requirement would clash with the regime Congress *did* create, which is that the prisoner must *exhaust,* not win a favorable judgment from, the available administrative, not judicial, remedies.

The federal appellate courts have been virtually uniform in maintaining this Court's clear distinction between core habeas claims affecting the fact or duration of custody and claims involving the way inmates are treated in prison. The only courts that deviate from the bright-line rule of *Preiser* – the Sixth Circuit in *Huey v.*

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[5] Pub. L. No. 104-134, §§ 801-810, 110 Stat. 1321-66 (1996). The exhaustion provision appears in PLRA § 803(d) (amending Civil Rights of Institutionalized Persons Act, Pub. L. No. 96-247, § 7, 94 Stat. 349-55 (1980), and codified as amended at 42 U.S.C. § 1997e(a)).

Stine, 230 F.3d 226, and the Tenth Circuit in several unpublished decisions – misread *Edwards v. Balisok* to bar § 1983 claims that challenge the punishment imposed in prison disciplinary hearings, whether or not that punishment affected the length of a sentence as the deprivation of good-time credits did in *Edwards.* Application of the favorable termination principle to cases involving prison disciplinary hearings that do not attack the fact or duration of confinement flatly violates the conceptual underpinnings of *Preiser* and its progeny and sacrifices the analytical clarity of *Preiser's* bright-line rule.

Such an approach also lacks any independent justification in the broad terms and purpose of § 1983. Congress's unequivocal intent in § 1983 to place the federal courts between the states and their citizens "as guardians of the people's federal rights," *Mitchum v. Foster,* 407 U.S. 225, 242 (1972), easily outweighs the misplaced comity considerations that caused the Sixth Circuit's angst about "unwind[ing] the judgment of the state agency." JA 106. Moreover, general application of the favorable termination rule to disciplinary proceedings would have the curious result of precluding many classic civil rights plaintiffs – for example, an inmate who was placed in segregation by a hearing officer solely because of his race – from getting into federal court under a statute that was born of a fundamental distrust of state courts' willingness and ability to enforce such rights. Even if federal habeas is theoretically available for such claims – and this Court has never definitively held that it is – it is not a realistic option for challenging what are typically brief stints in detention. That contrasts sharply with core habeas cases, where favorable termination includes a federal habeas forum.

Even if a plaintiff bringing a § 1983 suit challenging only the conditions of his confinement *were* required to

first obtain a favorable judgment in federal habeas, plaintiffs like Petitioner – who are no longer subject to those conditions and are therefore prohibited from pursuing relief in habeas – must have a remedy in § 1983. Justice Souter's words in cases involving challenges to the fact or duration of confinement are just as applicable to cases challenging the conditions of confinement: the "better view," according to Justice Souter and the four Justices agreeing with him, "is that a former prisoner, no longer 'in custody,' may bring a § 1983 action establishing the unconstitutionality of a conviction or confinement without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy." *Spencer v. Kemna,* 523 U.S. 1, 21 (1998) (Souter, J., concurring).

Though Petitioner remains incarcerated, he is no longer subject to Respondent's retaliatory conduct and is no longer serving either the mandatory prehearing detention or the detention imposed at the misconduct hearing. The § 1983 claim of a prisoner such as Petitioner should be presumptively cognizable unless the remedy it seeks causes a collision at the intersection of federal habeas and § 1983. Petitioner's § 1983 action does not clash with federal habeas corpus because it has no prospect of invalidating his underlying conviction or the duration of his sentence and because the term of segregation was too brief to permit litigation of any habeas claim he might have had. The history and purpose of § 1983, which provides a remedy for deprivations of "any" constitutional rights by "[e]very" person acting under color of state law, admit no basis for extending the favorable termination requirement, and effectively eliminating the prospect of a § 1983 claim, to an inmate whose claim cannot be remedied by the federal habeas statute.

ARGUMENT

I. A SECTION 1983 SUIT CHALLENGING THE CONDITIONS OF A PRISONER'S CONFINEMENT IS NOT SUBJECT TO THE FAVORABLE TERMINATION RULE OF *HECK V. HUMPHREY*

Section 1983 is an expansive statute designed to enforce the protections of the Fourteenth Amendment against the unlawful actions of those acting under color of state law. A product of the post-Civil War era when the Ku Klux Klan was brazenly flouting the law and when state officials and state courts in the South often would not or could not protect the civil liberties of all citizens, § 1983 "opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation." *Mitchum v. Foster,* 407 U.S. at 239.

The § 1983 remedy has been broadly available to prisoners without regard to the existence or use of state remedies, with two significant exceptions. First, as a matter of statutory interpretation harmonizing the more specific requirements of federal habeas and § 1983's broad language – language that if literally applied would swallow virtually all habeas cases – this Court held in *Preiser v. Rodriguez* that heartland habeas cases that challenge the fact or duration of confinement must be brought under the habeas statute and may not be brought as § 1983 cases. In what must be read as an extension of *Preiser*'s rationale, *Heck v. Humphrey* required favorable termination of a criminal conviction through normal channels – that is, state court proceedings and federal habeas – before a litigant could collect money damages for a § 1983 claim that did not directly attack the fact of confinement but still

necessarily implied the invalidity of a state court judgment.

Second, Congress explicitly limited the availability of § 1983 through the PLRA's requirement that a prisoner exhaust "such administrative remedies as are available" before bringing an action with respect to prison conditions under § 1983. 42 U.S.C. § 1997e(a)). Because the favorable termination requirement emerges solely from concerns about preserving the federal habeas corpus structure where Congress intended it to apply, it does not apply here, in a case that involves not the validity of a state court conviction or duration of confinement, but a citizen's right, even behind bars, to civil liberties guaranteed by the Constitution. The PLRA's exhaustion requirement lays to rest any misguided notion that the favorable termination requirement is relevant to the present lawsuit independent of preservation of federal habeas as the proper means of bringing core habeas challenges. The PLRA evinces an unmistakable congressional intent to require exhaustion of state administrative remedies, not victory in state proceedings, as a precondition to a § 1983 suit challenging prison conditions.

A. The History of Section 1983

1. Origins and Evolution

The Civil Rights Act of 1871, 42 U.S.C. § 1983,[6] was enacted in the volatile aftermath of the Civil War to provide a federal remedy for infringements upon civil rights that were not being protected adequately by state

[6] Section 1983 was originally § 1 of the Civil Rights Act of 1871. 17 Stat. 13.

authorities, particularly in the South. The statute provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The purpose of § 1983, originally known as the Ku Klux Klan Act, was "to interpose the federal courts between the States and the people, as guardians of the people's federal rights – to protect the people from unconstitutional action under color of state law. . . . " *Mitchum v. Foster,* 407 U.S. at 242; *see also Monroe v. Pape,* 365 U.S. 167, 180 (1961) (Act was designed "to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies."). During this Reconstruction Era, "the Federal Government was clearly established as a guarantor of the basic federal rights of individuals against incursions by state power." *Patsy v. Board of Regents,* 457 U.S. 496, 503 (1982).

Notwithstanding § 1983's ambitious origins and expansive language, its utility to aggrieved citizens seeking relief for the most commonplace constitutional violations was not realized until after this Court's watershed decision in *Monroe v. Pape,* 365 U.S. 167. *Monroe* clarified that claims of constitutional violation were redressable in federal court under § 1983 whether state law provided a remedy for such conduct or not. *Id.* at 183. Three years later in *Cooper v. Pate,* 378 U.S. 546 (1964) (*per curiam*), this Court explicitly held that a prisoner's claim – like any other citizen's claim – that he was denied certain privileges solely because of his religious beliefs stated a cause of action under § 1983. The Court subsequently recognized that § 1983 provides a cause of action for unconstitutional prison conditions ranging from inadequate medical care, *Estelle v. Gamble,* 429 U.S. 97 (1976), to brutality by prison guards, *Hudson v. McMillian,* 503 U.S. 1 (1992).

This Court has consistently stated that exhaustion of state administrative remedies is not generally a prerequisite to a § 1983 action. *Patsy v. Board of Regents,* 457 U.S. at 501; *Monroe v. Pape,* 365 U.S. at 183. That changed significantly for inmates in 1995, when Congress passed legislation requiring such exhaustion in the context of prisoner challenges to the constitutionality of the conditions of their confinement.[7] The PLRA states that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). The PLRA's exhaustion requirement "applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they

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[7] In 1980, prior to the enactment of the PLRA, Congress passed a more limited exhaustion requirement in the Civil Rights of Institutionalized Persons Act (CRIPA), 94 Stat. 352, as amended, 42 U.S.C. § 1997e. The statute gave district courts the discretion to stay an inmate's § 1983 suit to allow exhaustion where it was "appropriate and in the interests of justice" and where the procedures available were determined by the court or by the U.S. Attorney General to be "plain, speedy, and effective administrative remedies." § 1997e(a)(1)&(b). The provision was rarely used. *See* Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1627-1628 (2003).

allege excessive force or some other wrong." *Porter v. Nussle,* 534 U.S. 516, 532 (2002).

2. History of the Favorable Termination Requirement

Prior to enactment of the PLRA, this Court recognized another limitation on the broad application of § 1983 in prison litigation – namely, the favorable termination requirement. The requirement that prisoners obtain a reversal or invalidation of the state judgment against them before pursuing certain § 1983 claims first surfaced when courts' expansive treatment of § 1983 actions came into conflict with the strict exhaustion requirements of the federal habeas corpus statute.[8] 28 U.S.C. § 2254.

The favorable termination requirement stems from this Court's decision in *Preiser v. Rodriguez,* 411 U.S. 475 (1973). In *Preiser,* the Court addressed the question whether state prisoners who brought a § 1983 action seeking injunctive relief to compel the restoration of illegally revoked good-time credits could obtain that relief even though the federal habeas statute provided a specific federal remedy for such an injury. The habeas corpus statute provides that a court "shall entertain an

[8] Section 1983 has numerous advantages to prisoners over habeas corpus in most – though not all – circumstances, including the ability to obtain money damages and attorneys fees as well as a trial by jury. *See* 42 U.S.C. § 1988(b). Moreover, since the enactment in 1996 of the Antiterrorism and Effective Death Penalty Act (AEDPA), habeas petitioners must demonstrate that the state court decision they are challenging "was contrary to, or involved an unreasonable application of, clearly established Federal law," or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(1). *See generally Wiggins v. Smith,* 123 S. Ct. 2527 (2003).

application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254. Such an application shall not be granted, however, "unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner." *Id.*

In *Preiser*, three inmates alleged under the Civil Rights Act that they were unfairly deprived of good-time credits as a result of unconstitutional disciplinary actions against them by prison officials. 411 U.S. at 478-482. This Court held the cause of action was not cognizable under § 1983. The inmates' request for restoration of good-time credits "fell squarely within [the] traditional scope of habeas corpus" because the inmates alleged that the deprivation of these credits rendered, or would eventually render, their incarceration illegal. 411 U.S. at 487. In the Court's view, "[i]t would wholly frustrate explicit congressional intent" if the respondents in *Preiser* could evade the habeas exhaustion requirement "by the simple expedient of putting a different label on their pleadings." *Id.* at 489-490.

In reaching this conclusion, the Court reviewed the history of habeas corpus as well as the statute's language, noting that a writ of habeas corpus was the established vehicle for securing release from illegal confinement from 16th century England to the time the American colonies gained independence to modern times. *Id.* at 484-486. In the *Preiser* Court's view, the habeas corpus statute was "explicitly and historically designed to provide the means for a state prisoner to attack the validity of his confinement," and an action represented "the core" or "the

essence" of habeas corpus if it attacked the legality of the plaintiff's custody. *Id.* at 484, 489. Thus, notwithstanding the "literal applicability" of § 1983's terms, habeas corpus must be the exclusive remedy where the prisoner's challenge "is just as close to the core of habeas corpus as an attack on the prisoner's conviction, for it goes directly to the constitutionality of his physical confinement itself and seeks either immediate release from that confinement or the shortening of its duration." *Id.* at 489.

This focus upon actions that cast doubt upon the fact or duration of an inmate's custody was central to the *Preiser* Court's analysis, and the Court was careful to distinguish such claims from those challenging only the conditions of an inmate's confinement. The Court rejected the prisoners' reliance upon several decisions upholding the right to attack allegedly unlawful conditions of confinement, stating that "none of the state prisoners in those cases was challenging the fact or duration of his physical confinement itself," and that "a § 1983 action is a proper remedy for a state prisoner who is making a constitutional challenge to the conditions of his prison life, but not to the fact or length of his custody." 411 U.S. at 498-499. The Court indicated that a prisoner could bring a damages-only action under § 1983 without having to exhaust state remedies. *Id.* at 494.

In the Term following *Preiser,* this Court in *Wolff v. McDonnell,* 418 U.S. 539 (1974), addressed the question whether a prisoner's challenge to the validity of the procedures for depriving prisoners of good-time credits could be brought under § 1983. Reaffirming *Preiser's* focus upon challenges to the fact or duration of a prisoner's confinement, the Court held that the inmates' request for restoration of good-time credits was foreclosed for the reason a similar request was disallowed in *Preiser:* such an action challenged the very fact or duration of the prisoners' confinement and should be pursued by seeking a

writ of habeas corpus rather than by bringing a § 1983 claim. *Id.* at 554. *Preiser* did not, however, bar the inmates from seeking declaratory relief and damages for the allegedly unconstitutional procedures the prison employed for imposing sanctions such as the loss of good time, *id.* at 554-555 – a request this Court later interpreted as a claim "for using the wrong procedures, not for reaching the wrong result" that would not necessarily have vitiated the denial of good-time credits. *Heck v. Humphrey,* 512 U.S. at 482-483. *Wolff* also noted that in contrast to the loss of good-time credits, "which affects the term of confinement," a challenge to an inmate's detention in a disciplinary cell is an attack upon the conditions of confinement. *Id.* at 547.

After *Wolff,* this Court did not revisit the interplay between habeas and § 1983 until 20 years later in *Heck v. Humphrey. Heck* was a suit for damages under § 1983 that alleged that state prosecutors and police investigators violated Heck's constitutional rights by, *inter alia,* destroying exculpatory evidence and conducting an illegal voice identification procedure. Noting that the Court in *Preiser* had had "no cause to address, and did not carefully consider," the damages question at issue in *Heck* when it indicated that prisoners could bring § 1983 damages actions without exhausting state remedies, the *Heck* Court held that such a statement was true only to the extent that the damages action would in no way demonstrate the invalidity of the prisoner's conviction or sentence. *Id.* at 481-482. Where "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence," the Court held, a prisoner's damages claim was not cognizable under § 1983 unless that conviction or sentence had previously been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal

authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus."[9] *Id.* at 486-487. The Court modeled this favorable termination requirement upon a similar constraint in malicious prosecution cases – the cause of action the Court viewed as providing "the closest analogy" to the type of § 1983 claim at issue in that case. *Id.* at 484.

Heck v. Humphrey made clear that § 1983 is not available for a lawsuit that casts doubt upon the legality of a conviction, regardless of the remedy sought. *Heck* confirmed the conceptual underpinnings of *Preiser,* characterizing the issue in *Heck* as one involving the collision between § 1983 and the federal habeas corpus statute, *id.* at 480, and devising a test – whether a judgment in favor of the plaintiff would "necessarily imply the invalidity of his conviction or sentence" – that echoes *Preiser*'s focus on whether the § 1983 claim was challenging the fact or duration of the prisoner's confinement. *Id.* at 487; *see also id.* at 483 (viewing the issue as "the same as the issue" in *Preiser). Heck* did not take issue with *Preiser*'s statement that § 1983 was the "proper remedy for a state prisoner who is making a constitutional challenge to the conditions of his prison life, but not to the fact or length of his custody." *Preiser,* 411 U.S. at 499. Indeed, *Heck* explicitly linked the situation before it – a prisoner seeking damages – to the rationale of *Preiser,* noting that a damage claimant attacking his conviction "can be said to be 'attacking . . . the fact or length of . . . confinement.'" 512 U.S. at 482 (quoting *Preiser*).

[9] The action should be allowed to proceed, however, where "the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff." *Id.* at 487.

Justice Souter, joined by Justices Blackmun, Stevens, and O'Connor, wrote a separate opinion concurring in the judgment, emphasizing that the result in *Heck* was compelled by the reasoning in *Preiser v. Rodriguez,* which held that it would frustrate Congress's explicit intent as embodied in the habeas statute's exhaustion requirement to permit a state prisoner to attack his conviction or sentence under § 1983 without exhausting state remedies. *Id.* at 497 (Souter, J., concurring in the judgment). In Justice Souter's view, "[t]his conclusion flows . . . from a recognition that 'Congress has determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement, [a] specific determination [that] must override the general terms of § 1983.'" *Id.* at 498 (citing *Preiser,* 411 U.S. at 490). Similarly, Justice Thomas's separate concurrence described the Court's task as one of harmonizing § 1983 and the federal habeas corpus statute, and joined the Court's opinion on the understanding that the Court was limiting the scope of § 1983 consistent with "the federalism concerns undergirding the explicit exhaustion requirement of the habeas statute. . . . " *Id.* at 490-491 (Thomas, J., concurring).

The next decision regarding the intersection of § 1983 and federal habeas corpus, *Edwards v. Balisok,* 520 U.S. 641 (1997), involved the question whether a state prisoner's claim for damages and declaratory relief challenging the validity of the procedures by which he was deprived of good-time credits is cognizable under § 1983. *Id.* at 643. The prisoner in *Edwards,* Jerry Balisok, filed a § 1983 action alleging that his due process rights were violated by a biased hearing officer who concealed exculpatory evidence and excluded witnesses' testimony in his defense. Though his punishment included loss of 30 days of good-time credits, he did not request their restoration, which would have made habeas his exclusive remedy

under *Preiser,* but instead only sought damages for the unconstitutional procedures employed in the disciplinary hearing. *Id.* at 645. The Ninth Circuit held that the claim was cognizable under § 1983 because it challenged only procedures rather than the actual loss of the good-time credits. *Id.* at 644. This Court reversed, holding that regardless of what remedy Balisok sought, his allegations of bias "would necessarily imply the invalidity of the deprivation of his good-time credits," *id.* at 646, establishing his entitlement to earlier release.

The result in *Edwards* was compelled by the well-established principles of *Preiser* and its progeny that if the unlawfulness of the actions the prisoner is attacking would void his conviction or duration of confinement, the § 1983 claim is cognizable only when the conviction or loss of good-time credits has previously been invalidated. *Heck v. Humphrey,* 512 U.S. at 482-483, 486-487; *Preiser v. Rodriguez,* 411 U.S. at 499-500. Most lower courts have properly interpreted *Edwards* as a case about good-time credits – that is, a case that merely applies *Heck*'s favorable termination requirement to challenges affecting the fact or duration of the prisoner's confinement because they address the legality of loss of good-time credits. *See, e.g., Moran v. Sondalle,* 218 F.3d 647, 650-651 (7th Cir. 2000) (*per curiam*). The Sixth Circuit has not conformed, however, and has instead read *Edwards* as barring § 1983 suits that would imply the invalidity of a disciplinary punishment even when a favorable ruling would *not* affect the fact or duration of a prisoner's sentence. *See Huey v. Stine,* 230 F.3d 226, 231 (6th Cir. 2000) (barring § 1983 challenge to disciplinary infraction where a favorable ruling would require the court to "annul the judgment of the Michigan Department of Corrections"); JA 106. The Court's unanimity and the absence of any explicit departure from *Preiser* undermine this radical reading of *Edwards.* Of the two federal circuits that most readily

embraced this approach in published decisions, the Seventh Circuit has unequivocally repudiated it in favor of an understanding that adheres to *Preiser*'s fundamental distinction between fact-or-duration and conditions cases,[10] and the Sixth Circuit appears now to be in conflict, having recently issued one *en banc* decision that seems to back away from *Huey v. Stine,* another that ostensibly supports it, and several subsequent unpublished decisions that continue to follow *Huey.*[11]

The most recent decision of this Court commenting on the habeas-§ 1983 conflict was *Spencer v. Kemna,* 523 U.S.

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[10] In *DeWalt v. Carter,* 224 F.3d 607 (7th Cir. 2000), which held that a prisoner could challenge the loss of his prison job under § 1983 without having previously invalidated the underlying disciplinary sanction, the Seventh Circuit overruled *Stone-Bey v. Barnes,* 120 F.3d 718 (7th Cir. 1997), which held that under *Edwards v. Balisok, Heck's* favorable termination rule applied to judgments rendered in the prison disciplinary setting. The Seventh Circuit later confirmed in *Moran v. Sondalle,* 218 F.3d 647, 650-651 (7th Cir. 2000), that *Edwards* was limited to "administrative orders revoking good-time credits or equivalent sentence-shortening devices."

[11] In its recent decision in *Dotson v. Wilkinson,* 329 F.3d 463 (6th Cir. 2003) (*en banc*), the Sixth Circuit, rejecting an argument that *Edwards'* use of the term *judgment* could refer to the decision of a parole board, held that a prisoner could bring a procedural challenge to a parole determination under § 1983 because such challenges did not "necessarily imply the invalidity of the prisoner's conviction or sentence." *Id.* at 471 n.2 & 472. *Dotson* did not explicitly overrule or even cite *Huey,* however, and in *Goodwin v. Ghee,* 330 F.3d 446 (6th Cir. 2003), another *en banc* case issued the same day as *Dotson,* the Court sent a conflicting signal when it affirmed by an equally divided court a district court ruling barring a prisoner's § 1983 action challenging the retaliatory actions of the Ohio Parole Board on the grounds that a ruling in his favor would invalidate the board's denial of his parole. Since *Dotson* and *Goodwin,* at least two unpublished decisions have followed *Huey v. Stine* without citing *Dotson. Ruiz v. Martin,* 2003 WL 21698889 at *3 (6th Cir. July 17, 2003); *Carico v. Benton, Ireland, and Stovall,* 68 Fed. Appx. 632, 639-640 (6th Cir. 2003).

1 (1998), which addressed the question whether a habeas petitioner already released from prison could satisfy the case-or-controversy requirement in challenging a parole revocation decision – answering that he could not. Both Justice Scalia writing for the majority and Justice Souter in concurrence commented on the habeas-§ 1983 collision issue in response to the petitioner's argument that habeas had to be available to him because *Heck v. Humphrey* foreclosed a remedy under § 1983 given that the petitioner was already out of custody and thus incapable of meeting the favorable termination requirement. *Id.* at 988. Justice Scalia viewed this argument as "a great non sequitur" and rejected the contention that a § 1983 action for damages "must always and everywhere be available." *Id.* Justice Souter, joined by Justices O'Connor, Ginsburg, and Breyer, indicated that a former prisoner no longer in custody, such as the petitioner in that case, should be able to bring a § 1983 action establishing the unconstitutionality of a conviction without meeting a favorable termination requirement that was impossible to meet. *Id.* at 989-990 (Souter, J., concurring). Justice Stevens dissented, but agreed with Justice Souter that the petitioner could bring an action under § 1983 given the Court's holding that he does not have a remedy under the habeas corpus statute. *Id.* at 992 (Stevens, J., dissenting).

B. Extension of a Favorable Termination Requirement to Section 1983 Conditions Cases Would Not Serve to Effectuate Congress's Intent in the Federal Habeas Corpus Statute – the Only Valid Basis Under *Preiser v. Rodriguez* for Categorically Limiting the Scope of Section 1983.

Whether a plaintiff who wishes to bring a § 1983 suit challenging only the conditions of his confinement must satisfy the favorable termination requirement of *Heck v.*

Humphrey is a question this Court essentially answered in *Preiser v. Rodriguez* – before *Heck* even formalized the requirement – when it stated that "a § 1983 action is a proper remedy for a state prisoner who is making a constitutional challenge to the conditions of his prison life, but not to the fact or length of his custody." 411 U.S. at 499. The dichotomy between conditions cases and fact-or-duration cases was central to the analytical underpinnings of the *Preiser* holding, and the cases succeeding *Preiser* assume its ongoing vitality. *See, e.g., Heck v. Humphrey,* 512 U.S. at 481-482 (characterizing certain damages claims as attacking the fact or duration of confinement under *Preiser*); *McCarthy v. Bronson,* 500 U.S. 136, 140 (1991) (noting *Preiser*'s distinction between fact-or-duration and conditions cases); *Porter v. Nussle,* 534 U.S. at 527 (same).

The single aim of the favorable termination requirement, as well as its precursor in *Preiser,* is to square § 1983's expansive language with the specific exhaustion requirement of the federal habeas corpus statute in circumstances where the two clash – that is, where the statutory language of § 1983 plainly encompasses the prisoner's claim but the remedy he would get, if successful, would be the quintessential habeas corpus relief of release from prison upon invalidation of his conviction or deprivation of good-time credits. "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and the traditional function of the writ is to secure release from illegal custody." *Preiser,* 411 U.S. at 484. To enforce Congress's intent in the habeas statute, therefore, *Preiser* concluded that a § 1983 suit was not cognizable, and that habeas was the sole federal remedy, where the suit attacked the very fact or length of the inmate's physical confinement. *Id.* at 487-488. Petitioner's challenge in this case to his treatment in prison raises no such concerns, and thus there is no basis for requiring him

to obtain relief from state officials before pursuing his federal remedy under § 1983.

The *Heck v. Humphrey* test, which asks whether "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence," *id.* at 487, derives directly from the *Preiser* fact-or-duration test. *See id.* at 481-482 (noting that a claim that necessarily demonstrates the invalidity of the conviction is one in which "the claimant *can* be said to be 'attacking . . . the fact or length of . . . confinement' "). As Justice Souter observed, *Heck* is best read as ruling that "after enactment of the habeas statute *and because of it*, prison inmates seeking § 1983 damages in federal court for unconstitutional conviction or confinement must satisfy a requirement analogous to the malicious-prosecution tort's favorable-termination requirement." *Id.* at 500 (Souter, J., concurring in the judgment) (emphasis added). Thus *Heck* was continuing the task that the Court began in *Preiser,* which was to identify a means of harmonizing the broad language of § 1983 with the specific terms of the federal habeas corpus statute. *Id.* at 480 (describing the case as lying at the "intersection" of the two statutes). That is particularly clear from the fact that Justice Thomas, one of the five Justices in the majority, conditioned his vote in part upon the understanding that the Court's holding stemmed from the need to reconcile § 1983 and the habeas statute's exhaustion requirement. *Id.* at 491 (Thomas, J., concurring); *cf. also Marks v. United States,* 430 U.S. 188, 193 (1977) (when no single rationale explaining the result enjoys the assent of five Justices, "the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds"); *Lurie v. Wittner,* 228 F.3d 113, 130 (2d Cir. 2000) (deeming concurring opinion that is arguably more narrow

than the Supreme Court's plurality opinion to "constitute[ ] the holding of the Court").

Notwithstanding the Sixth Circuit's contrary understanding, this Court's decision in *Edwards v. Balisok* reaffirmed *Preiser*'s reasoning that any limitations upon § 1983 must extend only to fact-or-duration challenges in the core of habeas corpus. *Edwards,* 520 U.S. at 646; *see also Brown v. Plaut,* 131 F.3d 163, 168 (D.C. Cir. 1997) (noting, after *Edwards,* that "the [Supreme] Court has never deviated from *Preiser's* clear line between challenges to the fact or length of custody and challenges to the conditions of confinement"). The favorable termination requirement would not have applied in *Edwards* if the sanction in question – the loss of good-time credits – had not affected the duration of the inmate's confinement. Indeed, the question presented, in the view of the unanimous Court, was "whether a claim for damages and declaratory relief brought by a state prisoner challenging the validity of the procedures used to deprive him of good-time credits is cognizable under § 1983." 520 U.S. at 643. The holding in *Edwards* that the petitioner's allegations of bias and dishonesty "necessarily imply the invalidity of the deprivation of his good-time credits" constitutes a straightforward application of *Preiser* to a procedural challenge to prison disciplinary hearings.[12]

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[12] Nearly all of the federal circuit courts have held that *Heck* and *Edwards* only require favorable termination with regard to disciplinary punishment that bears on the fact or duration of the inmate's sentence. *Jenkins v. Haubert,* 179 F.3d 19 (2d Cir. 1999); *Leamer v. Fauver,* 288 F.3d 532 (3d Cir. 2002); *Clarke v. Stalder,* 154 F.3d 186, 189 (5th Cir. 1998); *Moran v. Sondalle,* 218 F.3d 647 (7th Cir. 2000); *Sheldon v. Hundley,* 83 F.3d 231, 233 (8th Cir. 1996); *Ramirez v. Galaza,* 334 F.3d 850 (9th Cir. 2003); *Harden v. Pataki,* 320 F.3d 1289 (11th Cir. 2003); *Brown v. Plaut,* 131 F.3d 163 (D.C. Cir. 1997).

Petitioner's § 1983 claim is an attack upon *conditions*, not the fact or duration of his confinement.[13] No matter how successful, Petitioner's claim will not jeopardize his underlying conviction or the duration of his sentence. Under *Preiser* and its progeny, the favorable termination requirement does not apply to Petitioner's case, and there is no basis for judicially contriving such a prerequisite in a case that triggers no conflict with the federal habeas statute.

That some conditions claims might also be cognizable in habeas is an immaterial complexity. As an initial matter, while many federal appellate courts have reasonably held that prisoners can use the habeas statute to challenge conditions,[14] this Court has left the question open.[15] In any event, this Court identified and developed

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[13] The questions presented in this case, which were drafted by the Court after it granted Petitioner's *pro se* petition for writ of certiorari, correctly assume that Petitioner's § 1983 suit challenges only the conditions of his confinement. *See Wolff v. McDonnell*, 418 U.S. at 547 (recognizing that forfeiture of good-time credits "affects the term of confinement" while "confinement in a disciplinary cell ... involves alteration of the conditions of confinement"); *Sandin v. Conner*, 515 U.S. 472, 487 (1995) (prisoner's 30 days in segregation did not "present a case where the State's action will inevitably affect the duration of his sentence); *id.* at 486 n.9 (referring to disciplinary segregation as "the conditions suffered").

[14] *See, e.g., Boston v. Carlson*, 884 F.2d 1267, 1269 (9th Cir. 1989) (habeas is available to inmates seeking release "not from prison but just from a more to a less confining form of incarceration"); *Del Raine v. Carlson*, 826 F.2d 698, 702 (7th Cir. 1987); *Brennan v. Cunningham*, 813 F.2d 1, 4-5 (1st Cir. 1987).

[15] In *Bell v. Wolfish*, 441 U.S. 520, 527 n.6 (1979), this Court specifically reserved "the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement, as distinct from the fact or length of the confinement itself." *See* Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1637 (2003) ("Although it's clear that a prisoner may not seek to alter the fact or

(Continued on following page)

the *Preiser* fact-or-duration test fully mindful of the significant overlap between § 1983 and habeas for claims that are outside the core of habeas corpus. Before *Preiser*, this Court suggested in *Wilwording v. Swenson* that habeas is available to challenge some prison conditions, 404 U.S. at 251, and *Preiser* itself acknowledged that habeas corpus is arguably available to challenge "additional and unconstitutional restraints during [an inmate's] lawful custody." 411 U.S. at 499. Despite the existence of concurrent federal remedies, it is those core habeas cases attacking the fact or duration of the inmate's confinement that thwart Congress's intent to permit federal courts to undo unconstitutional criminal convictions only after an inmate exhausts all state remedies.

Exhaustion in the habeas corpus statute preserves federal-state comity and allows "the State to deal with ... peculiarly local problems on its own, while preserving for the state prisoner an expeditious federal forum for the vindication of his federally protected rights, if the State has denied redress." *Preiser*, 411 U.S. at 497-498; *see also Fay v. Noia*, 372 U.S. 391 (1963). The dichotomy between § 1983 conditions cases and cases about the legitimacy of the underlying criminal judgment has proven to be a well founded and workable principle that balances the objectives of both § 1983 and the habeas statute and that litigants and judges can comprehend. This Court best honors Congress's intent by reaffirming the enduring rationale of *Preiser* and its progeny.

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duration of his confinement in a nonhabeas suit, the reverse – whether habeas actions may challenge the conditions of confinement as well as its fact or duration – is less settled." (footnotes omitted)).

C. The Prison Litigation Reform Act Confirms That Congress Intended To Require Prisoners To Exhaust, But Not To Favorably Terminate, Their Attacks on Conditions of Their Confinement Before Pursuing an Action Under Section 1983.

Any doubt as to Congress's intent with respect to exhaustion in prison conditions cases was dispelled in 1996 by the enactment of the Prison Litigation Reform Act (PLRA). In explicitly requiring exhaustion of "such administrative remedies as are available" for § 1983 actions, like Petitioner's, that challenge the conditions of confinement, 42 U.S.C. § 1997e(a), the PLRA demonstrates that Congress intended an administrative exhaustion requirement, but not a favorable termination requirement involving judicial remedies, to apply in such cases. Extending the favorable termination requirement from fact-or-duration cases to conditions cases would flout Congress's precise objectives under the PLRA.

This Court faced a surprisingly similar task of statutory interpretation more than two decades ago in *Patsy v. Board of Regents,* 457 U.S. 496 (1982), when it addressed the question whether § 1983 required exhaustion of state administrative remedies. In the Court's view, neither the statute's language nor its legislative history supported making exhaustion a precondition to a § 1983 action, and the statute's aim of making federal courts the defenders of the people's civil rights seemed antithetical to such a requirement. *Id.* at 502-508.

Most persuasive to the Court, however, was the inescapable significance of a limited exhaustion requirement that Congress *did* create in the Civil Rights of Institutionalized Persons Act, a precursor to the PLRA that permitted a district court to stay an adult prisoner's

§ 1983 action to allow exhaustion of state remedies under certain limited circumstances. 42 U.S.C. § 1997e. Congress "clearly expressed its belief that a decision to require exhaustion for certain § 1983 actions would work a change in the law," which bolstered the Court's conclusion in *Patsy* that "[a] judicially imposed exhaustion requirement would be inconsistent with Congress's decision to adopt [CRIPA]." *Id.* at 508. The decision to enact such an exhaustion requirement for certain prisoner claims also manifested Congress's intent that other § 1983 suits outside the prison context remain unencumbered by any exhaustion requirement. *Id.* at 509.

On the merits, *Patsy* verifies that § 1983 in itself contains no general limitations that could be interpreted as a requirement to exhaust *or* to favorably terminate state remedies – a conclusion that is consistent with the need in *Preiser v. Rodriguez* and *Heck v. Humphrey* to recognize exceptions to that rule only in those § 1983 actions that threaten the integrity of the habeas statute's rule of exhaustion. *Patsy's* analysis of CRIPA similarly negates any argument in favor of a judicially created favorable termination requirement in prison cases that do not involve the fact or duration of confinement. Congress has explicitly spoken in the PLRA regarding the extent and manner in which it believes prisoners should be directed to state remedies in prison conditions cases. If, as this Court held in *Patsy,* Congress's decision to adopt CRIPA was inconsistent with a reading of § 1983 to include a general administrative exhaustion requirement, it is necessarily also true that Congress's enactment of the PLRA (as well as CRIPA before it) forbids reading a favorable termination requirement into § 1983 conditions suits. And, as in *Patsy,* policy arguments allegedly supporting a broader requirement of resort to state remedies

than Congress passed, *see, e.g., Patsy,* 457 U.S. at 512, are inconsequential.

Whether a favorable termination requirement for § 1983 conditions claims would make good policy sense is a legislative rather than a judicial dilemma – and a legislative dilemma Congress has already solved. "It is not for us to say whether Congress will or should create a similar scheme for other categories of § 1983 claims or whether Congress will or should adopt an altogether different exhaustion requirement for nonprisoner § 1983 claims." *Patsy,* 457 U.S. at 515. This Court deemed the question uniquely suited to resolution by Congress, with its "superior institutional competence to pursue this debate." *Id.* at 513. That conclusion pertains equally to the question whether § 1983 should be amended to include a favorable termination requirement for challenges to prison conditions.

The favorable termination requirement stems "not from a preference about how the habeas and § 1983 statutes ought to have been written, but from a recognition that 'Congress has determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement.'" *Heck v. Humphrey,* 512 U.S. at 498 (Souter, J., concurring in the judgment) (citing *Preiser,* 411 U.S. at 490). As the very existence of the PLRA confirms, extension of the favorable termination rule to § 1983 conditions cases would "usurp policy judgments that Congress has reserved for itself," *Patsy,* 457 U.S. at 508, by ignoring Congress's unambiguous intent in creating its own rule of administrative exhaustion for such cases.

D. The Favorable Termination Principle, Rooted in the Habeas Corpus Exhaustion Requirement, Has No Application to a Prison Disciplinary Proceeding That Does Not Affect the Duration of Custody.

While the vast majority of federal appellate decisions have held that the favorable termination rule does not bar any § 1983 conditions suits, the Sixth Circuit and some panels of the Tenth Circuit have persisted – based primarily on a misreading of *Edwards v. Balisok* – in applying the requirement to claims challenging the punishment imposed in prison disciplinary hearings, even when that punishment did not affect the fact or duration of custody.[16] But there is no principled basis for treating constitutional challenges to prison disciplinary hearings that do not prolong a prisoner's incarceration differently from other types of constitutional challenges to prison conditions. This distinction flatly contradicts this Court's consistent application of *Preiser*'s bright line rule clearly differentiating conditions cases from fact-or-duration-of-confinement cases, relinquishes the advantage of clarity that comes with that rule, and has no independent justification in

[16] *See Huey v. Stine,* 230 F.3d at 228-230. The Tenth Circuit's opinions are unpublished: *Easter v. Saffle,* 51 Fed. Appx. 286 (10th Cir. 2002) ("Although Easter claims that he is not seeking revocation of the punishment imposed by the prison disciplinary board, were we to find that his claims had merit, the correctness of that punishment would necessarily be implicated. Therefore, *Heck* applies."); *Cotton v. Simmons,* 23 Fed. Appx. 994 (10th Cir. 2002) ("Mr. Cotton failed to show that his disciplinary determination has been reversed or called into question. Thus, Balisok bars Mr. Cotton's claims regarding the disciplinary proceedings."); *but see Vann v. Bureau of Investigation,* 28 Fed. Appx. 861 (10th Cir. 2001) ("Before bringing a damage claim that casts doubt on the length of a prisoner's continued incarceration, the prisoner must first pursue a successful action for habeas corpus.").

§ 1983 itself. Even if there were some justification for such a perversion of this Court's unswerving jurisprudence, it would not apply in this case, as Petitioner concedes his guilt of the lesser offense of insolence and is attacking something other than the actual result of the disciplinary hearing.

1. Application of the Favorable Termination Requirement Here Would Defy Congress's Intent and Cross *Preiser*'s Bright Line

Edwards v. Balisok barred a prisoner from using § 1983 to challenge the procedures of a disciplinary hearing that resulted in the loss of good-time credits. Most courts properly read *Edwards* as an unremarkable case that applied the rule of *Preiser* and its progeny by requiring favorable termination because the prisoner's lawsuit ultimately attacked the duration of his sentence. *See, e.g., Torres v. Fauver,* 292 F.3d at 147; *Jenkins v. Haubert,* 179 F.3d 19, 27 (2d Cir. 1999); *Brown v. Plaut,* 131 F.3d at 167-168. The few that have misconstrued *Edwards* have typically seized upon its single mention of the "invalidity of the *punishment imposed*," 520 U.S. at 648 (emphasis added), as opposed to its other references to the invalidity of "a conviction or sentence," *id.* at 646, or "the invalidity of the deprivation of his good-time credits," *id.*, and then misinterpreted that phrase to require favorable termination for any prisoner who was using § 1983 to challenge the result of a disciplinary hearing.[17]

[17] *See Huey v. Stine,* 230 F.3d 226; *Riley v. Kurtz,* 1999 WL 801560 at *6 (6th Cir. Sept. 28, 1999) (relied on in *Huey*); *Easter v. Saffle,* 51 Fed. Appx. 286 (10th Cir. 2002); *Cotton v. Simmons,* 23 Fed. Appx. 994

(Continued on following page)

The phrase *the punishment imposed* was unquestionably restricted to the punishment imposed *in that case* – a deprivation of good-time credits that fell within *Preiser's* definition of core habeas cases because it affected the length of the inmate's sentence. Any contrary reading of *Edwards* is belied by the unanimity of the decision, the utter absence of any suggestion that the Court intended a radical departure from a consistent line of cases that preclude this reading, and the lack of any textual or historical basis in § 1983 for extending the favorable termination principle beyond its origins in the core of habeas corpus. Any other reading would also result in the confusion and unpredictability that have characterized the case law of those circuits – particularly the Sixth Circuit – that have deviated from *Preiser*'s bright line. Indeed, five years after *Edwards* this Court continued to recognize only "two broad categories of prisoner petitions: (1) those challenging the fact or duration of confinement itself; and (2) those challenging the conditions of confinement," *Porter v. Nussle,* 534 U.S. at 527, a characterization inconsistent with an approach that singles out one discrete type of conditions case for treatment previously reserved for fact-or-duration cases.

2. The Text and History of Section 1983 Do Not Independently Warrant a Favorable Termination Requirement Here

Because application of the favorable termination rule to prison disciplinary hearings not affecting the fact or duration of custody is unjustified under *Preiser,* the only

(10th Cir. 2002); *see also Stone-Bey v. Barnes,* 120 F.3d 718 (7th Cir. 1997), *overruled by DeWalt v. Carter,* 224 F.3d 607 (7th Cir. 2000).

possible basis for applying the requirement to such cases would be that it was somehow contained within § 1983 itself. Yet the historical purpose of § 1983 defeats any argument that Congress always intended such a rule as an affirmative ingredient of a § 1983 claim arising from prison conditions litigation. There is no reason to believe that the 1871 Congress that enacted § 1983 would have shared the Sixth Circuit's concern about "unwind[ing] the judgment of the state agency" when addressing the constitutionality of prison disciplinary procedures. JA 106 (citing *Huey v. Stine,* 230 F.3d at 230).

The federal judge looms large in § 1983. The legislation's primary rationale was to involve federal courts in the task of protecting the federal rights of citizens in the face of the largely unchecked actions of state authorities in violation of those rights. *See Steffel v. Thompson,* 415 U.S. 452, 472-473 (1974) (acknowledging "the paramount role Congress has assigned to the federal courts to protect constitutional rights"); *Patsy,* 457 U.S. at 503 (same). The origin, the purpose, and the plain language of § 1983 evince a congressional intent to ensure a federal forum for a class of civil rights offenses committed in the name of the state and as to which state judges were thought unlikely to be impartial and fully protective of constitutional rights. It would be a cruel historical irony to engraft onto a federal civil rights remedy specifically intended to redress the abuses and deficiencies of state systems of justice a requirement that a plaintiff prevail before the state before he may invoke the federal remedy.[18]

[18] Such an anomaly does not exist in *Heck* or *Edwards* because the opportunity for favorable termination includes a federal habeas forum, the one that Congress intended for litigation of challenges to state court convictions and duration of confinement.

Quintessential tort claims about the constitutionality of prison conditions routinely arise in a disciplinary context, including cases this Court has treated as valid § 1983 actions. In the hitching post case itself, which asserted an Eighth Amendment claim under § 1983, the prison guards handcuffed the prisoner to the hitching post as punishment for misbehaving at a chain gang worksite. *Hope v. Pelzer,* 536 U.S. at 734. Relatedly, where a Muslim prisoner is sentenced to ten days in isolation solely because the hearing officer hates Muslims, his right to pursue a federal remedy under § 1983 cannot reasonably hinge on whether that brazen unconstitutional action was associated with a disciplinary proceeding. Indiscriminate application of the favorable termination rule to disciplinary proceedings would bar the Muslim prisoner's § 1983 claim – the very case the statute was designed to remedy – and would give the state, whether it be the warden or the state supreme court (in states that choose to have judicial review of prison administrative proceedings), the equivalent of veto power over the prisoner's right to federal review of his constitutional claim.[19]

[19] Notably, application of the favorable termination rule to disciplinary proceedings not affecting the fact or duration of custody would not curb the number of procedural due process challenges to disciplinary hearings because this Court has already held that unless the discipline "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life," prisoners have no liberty interest in avoiding administrative punishments that do not affect the duration of an inmate's sentence. *Sandin v. Conner,* 515 U.S. 472, 484, 487 (1995); *see also id.* at 485 ("Discipline by prison officials in response to a wide range of misconduct falls within the expected perimeters of the sentence imposed by a court of law."). This Court did not eliminate such claims on the theory that the state should be the final arbiter of constitutional rights, but because of its conclusion that the prisoner has no constitutional right that warrants protection.

The history and purpose of the habeas corpus statute also preclude any extrapolation from *Edwards* that would require favorable termination in all § 1983 challenges to the punishment imposed at disciplinary proceedings, even those that do not affect the duration of sentence. The writ extends to a prisoner when "[h]e is in custody in violation of the Constitution or laws or treaties of the United States," 28 U.S.C. § 2241, and its principal function is to get an inmate out of illegal custody. Like an attack on the criminal judgment itself, litigation over good-time credits also affects an inmate's term in prison and is conducive to resolution in habeas corpus because the remedy sought is to get out of prison sooner. It is also conducive to litigation in habeas because a prisoner who is serving anything but the shortest sentence will have time to litigate the loss of good-time credits while the remedy – restoration of those credits – would still be meaningful. Challenges to administrative segregation and other forms of disciplinary punishment, on the other hand, are about how an inmate is treated while in prison, rather than when he will get out, and are therefore not core habeas claims. Their fleeting nature also makes disciplinary conditions cases a poor fit for habeas, if they are cognizable in habeas at all.

The highly discretionary and often slapdash nature of prison disciplinary hearings provides further insight into why Congress intended to require administrative exhaustion in the PLRA, but not favorable termination, of § 1983 attacks on disciplinary punishments outside of core habeas. Congress believes application of the habeas exhaustion doctrine is warranted when a defendant seeks to invalidate a conviction that has resulted from a criminal trial, as "it would be unseemly in our dual system of government for a federal district court to upset a state court conviction without an opportunity to the state courts to correct a constitutional violation." *Rose v. Lundy,* 455 U.S. 509, 518 (1982) (quotation marks omitted). Even

where concern for comity is greatest – as in attacks in habeas upon the criminal trial, "the 'main event' at which a defendant's rights are to be determined," *McFarland v. Scott,* 512 U.S. 849, 859 (1994) – Congress has required exhaustion prior to federal review, but has by no means given states the power to preclude federal review altogether, as the favorable termination requirement would do in disciplinary conditions cases.

The concern for comity is far less compelling when applied to a prison disciplinary proceeding that is not judicial in nature and that does not affect the implementation of a judicially imposed sentence. The function of hearing officers in prison disciplinary matters is not "a 'classic' adjudicatory one." *Cleavinger v. Saxner,* 474 U.S. 193, 203 (1985). "Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." *Wolff v. McDonnell,* 418 U.S. at 556; *see also Sandin v. Conner,* 515 U.S. 472, 487 (1995) (prisoners have no liberty interest in avoiding administrative segregation). Prisoners facing disciplinary action typically have no lawyer or independent representative, no right to compel witnesses' attendance or to cross-examine, no right to discovery, no verbatim transcript, no precise burden of proof, and no restriction on hearsay and self-serving information. *Cleavinger,* 474 U.S. at 206. To label the members of the disciplinary committee "independent" would be "to ignore reality," as they are prison employees who are the subordinates of the warden reviewing their decision, who work with the employee who charged the inmate they are judging, and who are "under obvious pressure to resolve a disciplinary dispute in favor of the institution and their fellow employee." *Id.* at 203-204, 206. The misguided decisions of the Sixth and Tenth Circuits that have found considerations of comity to be overriding in conditions claims arising from such hearings have

somehow overlooked Congress's unambiguous intent to account for these concerns in a far more limited way by requiring administrative exhaustion in the PLRA.

3. Petitioner Is Not Challenging the Punishment Imposed at a Disciplinary Hearing

Finally, even if it were legitimate to require favorable termination in § 1983 claims arising in disciplinary contexts outside the heart of habeas, which it is not, the rule still should not bar Petitioner's lawsuit because Petitioner is not challenging the result of his disciplinary proceeding. Throughout this litigation Petitioner has conceded that he was guilty of the lesser offense of insolence, and focused his challenge upon Respondent's retaliatory acts and his decision to charge a more serious offense – threatening behavior – than the offense that Petitioner actually committed. *See* Record at 8; Brief in Opposition 27a (Petitioner "agrees he was guilty of Insolence"). As the Magistrate Judge noted, then, the only punishment that was "definitely in issue" was the six-day mandatory prehearing detention that resulted from Respondent's choice to charge a "nonbondable" offense that required such detention. Brief in Opposition 27a. Thus, Petitioner's claim, if successful, would not imply the invalidity of the length of his sentence *or* the invalidity of the punishment imposed at the disciplinary hearing.

The circumstances of Petitioner's case exemplify the difficulties inherent in any deviation from *Preiser's* bright-line rule, a deviation implicit in those lower court decisions that have misread *Edwards* to suggest that all conditions cases involving disciplinary proceedings – not just those involving good-time credits – are subject to the favorable termination rule. Petitioner's case is analogous to a situation in which a citizen who is racially targeted for

arrest also resists that unlawful arrest.[20] Just as the officers' violation of the minority victim's rights is not a defense to resisting arrest, Petitioner's complaint about Respondent's violation of his First Amendment rights was not an issue capable of meaningful litigation in the disciplinary hearing on Petitioner's misconduct charge: he could still be guilty of insolence notwithstanding the constitutional violation. Yet both the victim of unlawful arrest and Petitioner should have a cause of action under § 1983 for their respective constitutional claims, separate and apart from the criminal prosecution or disciplinary process.

E. Conclusion

From *Preiser* to *Spencer,* this Court's decisions on the interplay between § 1983 and habeas corpus have consistently maintained an analytically crisp distinction between fact-and-duration and conditions cases that effectuates Congress's intent in the habeas exhaustion requirement and that judges and prisoners can understand and apply with ease. After a false start in *Stone-Bey v. Barnes* (the overruled case whose misreading of *Edwards* obliterated the bright line of *Preiser*), the Seventh Circuit now properly characterizes the resolution of the habeas-§ 1983 conflict as "simple": "State prisoners who want to challenge their convictions, their sentences, or administrative orders revoking good-time credits or

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[20] The analogy is fitting because § 1983 is just as concerned with how people are treated in prison – where inmates have much more interaction with state actors – as it is with how police officers and other state actors treat people outside the prison walls. "There is no iron curtain drawn between the Constitution and the prisons of this country." *Wolff v. McDonnell,* 418 U.S. at 555-556.

equivalent sentence-shortening devices, must seek habeas corpus, because they contest the fact or duration of custody," while constitutional challenges "to any other decision," including administrative segregation, may proceed through § 1983. *Moran v. Sondalle,* 218 F.3d at 650-651. This view is inescapable in light of the history and purpose of § 1983 as a "uniquely federal remedy," *Mitchum v. Foster,* 407 U.S. at 239, the underpinnings of the favorable termination rule as articulated in *Preiser,* and the clear indication in the PLRA that Congress intended to require exhaustion of administrative remedies, but not favorable termination, in § 1983 challenges to prison conditions. This Court should reverse the Sixth Circuit's judgment that *Heck* bars Petitioner's action under § 1983.

II. A PRISON INMATE WHO HAS BEEN, BUT IS NO LONGER, IN ADMINISTRATIVE SEGREGATION MAY BRING A SECTION 1983 SUIT CHALLENGING THE CONDITIONS OF HIS CONFINEMENT WITHOUT FIRST SATISFYING THE FAVORABLE TERMINATION REQUIREMENT OF *HECK V. HUMPHREY*

The question whether an inmate may bring a § 1983 action to challenge his prior placement in administrative segregation once he is released from segregation stems from an assumption that such a suit would otherwise require compliance with *Heck v. Humphrey's* favorable termination rule. Thus, if § 1983 suits challenging conditions are *not* subject to the favorable termination rule, such a suit is presumably available to the inmate whether he remains in segregation or not. *See Torres v. Fauver,* 292 F.3d 141, 145 (3rd Cir. 2002) (deeming it unnecessary to reach the question whether the favorable termination rule applies to persons who cannot seek habeas relief when the court concluded that the rule did not apply to challenges to prison disciplinary sanctions that did not affect the fact or

length of a prisoner's confinement). If this Court departs from the underlying rationale of *Preiser* and its progeny and determines that suits that do not challenge the fact or duration of an inmate's confinement *are* within the scope of *Heck's* favorable termination requirement, that requirement should not extend to inmates, such as Petitioner, who cannot invoke federal habeas corpus jurisdiction because they have been released from the heightened detention that is the subject of the challenge.[21]

Though this Court has never decided the question, statements appearing in majority, concurring, and dissenting opinions in *Heck v. Humphrey* and *Spencer v. Kemna* have articulated the basic arguments on both sides. The issue first appeared in a footnote of *Heck v. Humphrey,* where Justice Scalia, writing for the majority, rejected the suggestion Justice Souter made in his opinion concurring in the judgment that the favorable termination rule should not apply to those who were not "in custody" for habeas purposes. 512 U.S. at 490 n.10. In Justice Scalia's view, "the principle barring collateral attacks . . . is not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated," and the Court's recognition of limitations upon § 1983 such as absolute immunity from liability for judicial officers demonstrates that not all violations of federal rights must have a remedy. *Id.*

For his part, Justice Souter noted that the Court's assertion was merely dicta, and argued the opposing view that the Court's holding should not "cast doubt on the

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[21] "[A]ll but one of the circuit courts to consider the issue have held[ ] that both current and former prisoners can use § 1983 to raise claims relating only to the conditions, and not the fact or duration, of their confinement without satisfying the favorable termination rule." *Torres v. Fauver,* 292 F.3d at 145.

ability of an individual unaffected by the habeas statute to take advantage of the broad reach of § 1983." *Id.* at 503 (Souter, J., concurring in the judgment). In Justice Souter's view, which Justices Blackmun, Stevens, and O'Connor joined, the common law analogy of malicious prosecution was just that, an analogy, and the Court's reliance upon the example of that tort did not change the basic underpinnings of the rule from *Preiser*, which sought only to effectuate the habeas exhaustion requirement. 411 U.S. at 489. It would be "an untoward result," Justice Souter stated, "to deny any federal forum for claiming a deprivation of federal rights to those who cannot first obtain a favorable state ruling" because "individuals not 'in custody' cannot invoke federal habeas jurisdiction, the only statutory mechanism besides § 1983 by which individuals may sue state officials in federal court for violating federal rights." *Id.* at 500.

The issue arose again in *Spencer v. Kemna,* where the Court declined to extend to a parole revocation challenge its rule that the collateral consequences of a criminal conviction warrant continuing standing for a habeas petitioner even after he is released from prison. 523 U.S. at 14. There, Justice Scalia, writing for the Court, rejected the petitioner's contention that habeas had to be available for his challenge to the propriety of his parole revocation because *Heck v. Humphrey* foreclosed a remedy under § 1983. Justice Scalia deemed this argument "a great non sequitur, unless one believes (as we do not) that a § 1983 action for damages must always and everywhere be available." *Id.* at 17. Justice Souter, joined by Justices O'Connor, Ginsburg, and Breyer, agreed that the petitioner's argument was incorrect – not because the unavailability of a federal remedy was an acceptable

outcome, but because a federal remedy *was*, in fact, available in § 1983.[22] "The better view," according to Justice Souter, "is that a former prisoner, no longer 'in custody,' may bring a § 1983 action establishing the unconstitutionality of a conviction or confinement without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy." *Id.* at 21. The dissenting Justice Stevens also indicated his agreement with Justice Souter that if the petitioner did not have a remedy under the habeas statute, "it is perfectly clear . . . that he may bring an action under 42 U.S.C. § 1983." *Id.* at 24 n.8 (Stevens, J., dissenting).

The issue in the present case is somewhat different from the dicta in *Heck*'s footnote 10, as Petitioner here is challenging the conditions of his confinement rather than the validity of his underlying conviction or sentence. The same reasoning applies, however, whether a prisoner is precluded from filing a habeas petition to challenge an unlawful condition because he has already completed a short term of administrative segregation or whether he is barred from attacking his conviction itself under the habeas statute because he was only fined or has already served his sentence and is therefore not "in custody" for habeas purposes. In either context, the stance Justice Souter took in his concurrences in *Heck* and *Spencer* is "the better view." *Spencer,* 523 U.S. at 21.

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[22] Justice Ginsburg concurred separately, as well, to note that although she had joined the majority opinion in *Heck,* she had come to agree with Justice Souter's reasoning that "[i]ndividuals without recourse to the habeas statute because they are not 'in custody' (people merely fined or whose sentences have been fully served, for example) fit within § 1983's 'broad reach.'" *Id.* at 21 (Ginsburg, J., concurring).

Like conditions cases generally, § 1983 cases in which an inmate is barred from challenging his unlawful segregration on habeas are outside the heart of habeas corpus and therefore create no conflict with the habeas exhaustion doctrine. Under *Heck,* courts must dismiss § 1983 suits that would imply the invalidity of the inmate's custody "not because the favorable termination requirement was necessarily an element of the § 1983 cause of action for unconstitutional conviction or custody, but because it was a simple way to avoid collisions at the intersection of habeas and § 1983." *Spencer v. Kemna,* 523 U.S. at 20 (Souter, J., concurring) (internal quotations omitted). If a plaintiff is powerless to attack his conviction on habeas, his § 1983 action cannot frustrate any intent of Congress in the habeas exhaustion requirement. In the context of Petitioner's case, in particular – where the § 1983 action challenges a heightened detention within the prison rather than the fact of his incarceration generally – the threat to habeas corpus is nonexistent. Habeas corpus is an extraordinary remedy that Congress made available only to those "in custody" for purposes of the habeas statute; Congress did not concomitantly signal, however, that people with meritorious constitutional claims who were *not* in custody should not have a federal remedy for those claims.

There is considerable force to the argument that citizens whose federal rights have been violated by governmental actors should have *some* remedy in federal court. *Marbury v. Madison,* 5 U.S. 137, 162-163 (1803). But that argument is wholly unnecessary to the resolution of this issue. Even if, as Justice Scalia indicated in *Spencer,* review by a federal court must *not* "always and everywhere be available," 523 U.S. at 17, neither can a § 1983 action be randomly eliminated "when no limitation was required for the sake of honoring some other statute or weighty policy[.]" *Id.* at 20 (Souter, J., concurring).

In footnote 10 of *Heck,* Justice Scalia offered the example of absolute immunity for judicial officers to demonstrate that § 1983 has not been interpreted to provide "a remedy for all conceivable invasions of federal rights." 512 U.S. at 490 n.10. That example only strengthens the argument that prisoners who do not have the option of habeas should not be required to favorably terminate because it illustrates a consciously narrow limitation that this Court recognized based only upon a secure belief that Congress intended to incorporate the immunities that existed when the Civil Rights Act became law or it would have explicitly abrogated them. *See Wyatt v. Cole,* 504 U.S. 158, 163-164 (1992). This Court can and must devise ways of reconciling conflicting statutes, provided that it does so "in a principled fashion." *Heck,* 512 U.S. at 491 (Thomas, J., concurring). That authority does not, however, permit the imposition of a broad-based restriction on § 1983 that far exceeds the legitimate purpose of its precursor in *Heck* and *Preiser,* that is not validated by the language or the history of the statute, and that cannot fairly be characterized as what Congress intended.

Section 1983 is the proper remedy for a violation of federal rights by someone acting under color of state law unless there is a good reason to believe Congress intended to foreclose that remedy. That reason might be a failure to exhaust administrative remedies in a suit challenging prison conditions, running afoul of Congress's own words in the PLRA. Or it might be a failure to favorably terminate an action that challenged the fact or duration of an inmate's confinement, which would contravene *Heck*'s solution for avoiding collisions between habeas and § 1983. For an inmate like Petitioner, however, his challenge to the conditions of his confinement creates no conflict with any congressional enactment, and even if this Court determines that the favorable termination rule does apply

to § 1983 conditions claims, Petitioner's release from segregation eliminated any conflict with habeas corpus along with any reason for precluding Petitioner from using § 1983 to pursue his civil rights claim.

CONCLUSION

This Court should reverse the decision of the Sixth Circuit and remand to that court for further proceedings.

Respectfully submitted,

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